

### **REMARKS**

This paper is filed in connection with the Request for Continuing Examination. Claims 1 and 3-18 are pending in the application. Claim 2 is cancelled. Claims 1, 4, 6, and 8-18 are amended. No new matter has been added.

Claims 1-4, 6, 10, 15, and 18 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,171,313 ("Salyer"). Applicants traverse the rejection.

Claim 1, as amended, claims an instrument for positioning a cup component of an orthopaedic joint prosthesis, the cup component having a mouth and an inner surface with a circumferential groove, the instrument comprising:

- a shaft having a shaft axis and a distal end;

- a housing attached to the distal end of the shaft, the housing extending from the shaft transversely relative to the shaft axis, the housing comprising a base plate;

- at least two flange portions carried on the shaft, each of the at least two flange portions being configured to move relative to the base plate in a direction transverse to the shaft axis between an in-use position, where at least a portion of each of the at least two flange portions is received in the groove of the cup component, and a retracted position where each of the at least two flange portions is moved towards the shaft axis so as to allow the cup component to be released from the instrument; and

- a spring element disposed between the at least two flange portions and the axis of the shaft, the spring element biasing each of the at least two flange portions towards the in-use position.

One embodiment of the invention is shown in Figure 3 of the application. The instrument 30 includes at least two flange portions depicted as elements 36. The spring element, depicted as element 39, is disposed between the at least two flange portions 36 and the axis of the shaft 32 and biases each of the at least two flange portions 36 towards the in-use position. See generally, specification, page 13. Figure 3 depicts the at least two flange portions in the in-

use position, with at least a portion of the at least two flange portions is received in the groove of the cup (see Figure 4).

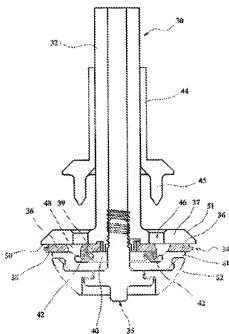
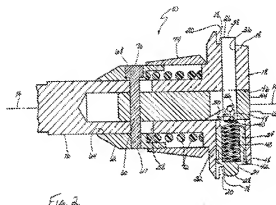


FIG. 3

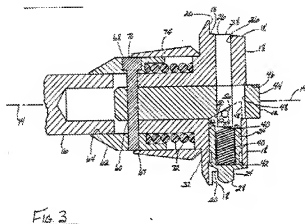
When the distal ends of pins 45 of sliding collar 44 are moved such that they extend through holes 46 in base plate 37 and the holes 48 in the at least two flange portions, the distal ends of pins 45 act against the upstands 42 of the at least two flange portions 36 which in turn act against the spring element 39 so as to move the at least a portion of each of the at least two flange portions towards the shaft axis to allow the cup component to be released from the instrument.

Salyer does not anticipate claim 1 as it fails to describe each element of the claimed invention. Specifically, Salyer does not describe, among other claimed elements, an instrument that includes at least two flange portions carried on the shaft, each of which is configured to be movable between an in-use position and a retracted position, and a spring element disposed between the at least two flange portions and the axis of the shaft, the spring element biasing each of the at least two flange portions towards the in-use position.

Salyer depicts a tool driver having a body. The body of the embodiment shown below in Figure 2 has a pair of oppositely disposed pins 24 and 26. Pin 26 is movable between an extended position and a retracted position.



When the user moves thumb trigger 62 towards end 13, this movement in turn moves action pin 44 so as to extend from boss 18, as is shown in Figure 3, and moves pin 54 on cam surface 50, thereby retracting latch pin 26. Salyer col 5:16-20.



With the thumb trigger held in its most forward position, and with latch pin 26 fully retracted, one of the pin holes in the tool is positioned around stationary pin 28 and the diametrically opposite portion of the tool is positioned against flange surface 20. Thumb trigger 62 is then released upon which spring 72 urges thumb trigger 62 and action pin 44 into its most rearward position as defined by the axial limits of either bore 58 as above mentioned. When thumb trigger 62 is in its most rearward position, latch pin 26 is extended from boss 18 and both pins 26 and

28 are positioned in the diametrically opposite pin holes of tool 12. Salyer col 5:20-31. It should be noted that the specification of Salyer mistakenly refers to the stationary pin 24 as element 28, but element 28 is the distal end of stationary pin 24. See Salyer, col 3:24-25.

Thus, while Salyer discloses two pins and states that at least one of the pins is movable, Salyer only describes an embodiment that provides a means of moving one of the pins—pin 26, shown at the top of Figures 2 and 3. And, spring 42 acts only on pin 26. Salyer col 3:31-32 (“Spring 42 extends from within pin 24 to abutment end 40 of latch pin 26.”). The other pin—pin 24, shown at the bottom of Figure 2—is described as a stationary pin. See Salyer col 5:22 and col 4:56-57 (“These pins are stationary pins like pin 24 above described”) (comparing pins of second embodiment to embodiment in Figures 2 and 3). The pins of the second embodiment, depicted in Figure 4, are not movable. See Salyer col 4:56-57.

Salyer therefore does not describe an instrument that includes at least two flange portions carried on the shaft, each of which is configured to be movable between an in-use position and a retracted position, and a spring element disposed between the at least two flange portions and the axis of the shaft, the spring element biasing each of the at least two flange portions towards the in-use position. Applicants request the withdrawal of the rejection.

Claims 5, 8-9, and 12, are rejected under 35 U.S.C. 103(a) as being unpatentable over Salyer. Claims 11, and 13-14, are rejected under 35 U.S.C. 103(a) as being unpatentable over Salyer in view of U.S. Patent No. 5,486,181 (“Cohen”). Claims 16-17, are rejected under 35 U.S.C. 103(a) as being unpatentable over Salyer in view of U.S. Patent No. 4,023,572 (“Weigan”). Applicants traverse the rejections.

Applicants submit that Salyer does not anticipate claim 1, and therefore does not anticipate claims 3-18, which depend from claim 1. Applicants submit that many of the claims that depend from claim 1 are patentable in their own right. For example, claim 15 defines an embodiment of the invention that provides a collar that is slidably connected to the shaft that has at least two pins that can be at least partially disposed within base plate and flange holes. Claim

16 provides that the at least two flange portions has an upstand configured to contact the spring element, the upstand being displaced towards the shaft axis when the collar is in the second position to thereby move the at least two flange portions from the in-use position to the retracted position. Claim 17 describes that when the collar is in the second position, the upstands of the at least two flange portions compress the spring element. Claim 18 provides that the at least two flange portions and the base plate are configured such that, when the collar is in the first position, the at least two base plate holes and the at least two flange holes are not aligned.

Applicants reserve the right to argue further patentability based on the claimed elements of claims 3-18 with respect to Salyer. Applicants request that the Examiner withdraw the obviousness rejections.

Please charge any fee required during and in connection with the prosecution of this application to Deposit Account No. 10-0750.

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Dated: March 8, 2010